IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6700 OF 2004

Kalpana Govind Koli
since deceased through her L.Rs.
Smt. Laxmibai Kallappa Koli & Ors. .. Petitioners

V/s

Tatoba Govind Koli & Ors. .. Respondents

Mr.Rupesh Bobde for the Petitioners.

None for the Respondents.

CORAM : D.G. KARNIK, J.

DATE : 24TH APRIL 2007

P.C. :

1. Heard the learned counsel for the Petitioners. None present for the Respondents.

2. This petition is directed against the order dated 2nd July 2004 passed by the executing Court accepting the report of the Court Commissioner and issuing the possession warrant as per the partition suggested by the Court Commissioner.

3. A decree for partition of the suit premises was passed against the Petitioners. On decree being put for execution, the Court by its order dated 3rd February

2004 appointed a Court Commissioner to suggest the partition. Thereafter the Court Commissioner submitted his report along with the plans of the physical partition of the property. By the impugned order, the Court directed the issuance of a warrant in pursuance of the Court Commissioner's report.

4. The learned counsel for the Petitioners submitted that the Court has not passed any formal order accepting the report of the Court Commissioner. True, that the Court has not passed any formal order accepting the Court Commissioner's report, but it appears from the impugned order that no say was filed to the Petitioners' application and, therefore, the order of issuance of a possession warrant was issued. The order amounts to implied acceptance of the Court Commissioner's report for effecting the partition.

5. There is one more difficulty in the way of the Petitioners. The Respondent No.2 appears to have died some time in the year 2004. The farad of the Court shows that on 5th January 2005, an entry regarding the death of the Respondent No.2 was made in the record. The Petitioners thereafter did not take any steps for bringing the heirs of the deceased Respondent No.2 on record. The impugned order has therefore, become final

qua the Respondent No.2. The impugned order as against the Respondent No.2 cannot be set aside. The order being indivisible cannot be set aside against others also.

6. For the aforesaid reasons, the writ petition is rejected summarily.

(D.G. KARNIK, J.)